



Adjustment of Status and the § 245(k) Exemptions for Certain Employment-Based Adjustment Applicants



Section 245(k) of the Act

- Created in 1997– the same legislation that gave us the first section 245(i) sunset.
- Effective upon enactment.
- The Service has not published regulations regarding section 245(k).
- HQ issued a brief 3/20/98 memorandum.
- Proposed rule now in clearance.

The Law:

Section 245(k) of the Act

Aliens described in § 245(k) can file for adjustment of status under § 245(a) and are exempt the bars to adjustment found at §§ 245(c)(2), (c)(7), and (c)(8).





Who is Described in Section 245(k)? (Part 1)

- EB-1: Priority workers;
- EB-2: Professionals w/advanced degrees or aliens of exceptional ability;
- EB-3: Skilled workers, professionals, or others;
- EB-4: Religious Workers (only); and
- The spouse and children of eligible aliens.



Who is Described in Section 245(k)? (Part 2)



Additionally, the alien must be:

1. Present in the U.S. on the date of filing the application for adjustment of status, pursuant to a lawful admission (not parole), and
2. Have not, subsequent to that admission, violated status in the following manners for an aggregate period of **180 days**...



Who is Described in Section 245(k)? (Part 3)

1. Failed to maintain, continuously, a lawful status;
2. Engaged in unlawful employment; and/or
3. Otherwise violated the terms and conditions of his or her admission.



More Status Violations Excused by § 245(k)

- Note that violations of INA §§ 245(c)(2), (c)(7), or (c)(8) that occurred **before** a qualifying alien's last lawful admission **do not** render the alien ineligible to adjust **or** count toward the 180-day total. (But there may be 222(g) or 212(a)(9)(B) issues.)
- However, any violation of other paragraphs of INA § 245(c)—(c)(1), (c)(3), (c)(4), (c)(5), and (c)(6)—**do** render the alien ineligible.





Who is *NOT* Eligible?

- Aliens with more than 180 days of status violations;
- EB-4: Special immigrants other than Religious Workers;
- EB-5: Employment creation immigrants;
- Family-preference immigrants;
- Diversity visa immigrants; and,
- Asylum/Refugee adjustment applicants.

Counting Time Out of Status



The 180-day clock:

- Begins on the first day the alien falls out of status.
- Ends on the date the alien files for adjustment of status.

Counting Unauthorized Employment



The 180-day clock:

Begins with the first day the alien works without authorization, and

Ends on the last day the alien works without authorization.

The filing of the adjustment application **does not stop the clock;*

**It is the aggregate time the alien works, so if he or she stops and starts, each day counts towards the total.*

Final Notes

- There are no extra filing procedures or additional forms required for aliens using § 245(k) of the Act.
- Likewise, there is no \$1,000 penalty fee or other surcharge.
- Questions?

